

CHAPTER 9. PROFESSIONAL DISCIPLINARY PROCEEDINGS

MICHIGAN COURT RULES OF 1985

Subchapter 9.100 Attorney Grievance Commission; Attorney Discipline Board

Rule 9.101 Definitions

As used in subchapter 9.100:

- (1) "board" means the Attorney Discipline Board;
- (2) "commission" means the Attorney Grievance Commission;
- (3) "administrator" means the grievance administrator;
- (4) "investigator" means a person designated by the administrator to assist him or her in the investigation of alleged misconduct or requested reinstatement;
- (5) "attorney" means a person regularly licensed or specially admitted to practice law in Michigan;
- (6) "respondent" means an attorney named in a request for investigation or complaint;
- (7) "request for investigation" means the first step in bringing alleged misconduct to the administrator's attention;
- (8) "complaint" means the formal charge prepared by the administrator and filed with the board;
- (9) "review" means examination by the board of a hearing panel's final order on petition by an aggrieved party;
- (10) "appeal" means judicial re-examination by the Supreme Court of the board's final order on petition by an aggrieved party;
- (11) "grievance" means alleged misconduct;
- (12) "investigation" means fact finding on alleged misconduct under the administrator's direction.
- (13) "disbarment" means revocation of the license to practice law.

Rule 9.102 Construction; Severability

(A) Construction. Subchapter 9.100 is to be liberally construed for the protection of the public, the courts, and the legal profession and applies to all pending matters of misconduct and reinstatement and to all future proceedings, even though the alleged misconduct occurred before the effective date of subchapter 9.100. Procedures must be as expeditious as possible.

(B) Severability. If a court finds a portion of subchapter 9.100 or its application to a person or circumstances invalid, the invalidity does not affect the remaining portions or other applications. To this end the rules are severable.

Rule 9.103 Standards of Conduct for Attorneys

(A) General Principles. The license to practice law in Michigan is, among other things, a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor and as an officer of the court. It is the duty of every attorney to conduct himself or herself at all times in conformity with standards imposed on members of the bar as a condition of the privilege to practice law. These standards include, but are not limited to, the rules of professional responsibility and the rules of judicial conduct that are adopted by the Supreme Court.

(B) Duty to Assist Public to Request Investigation. An attorney shall assist a member of the public to communicate to the administrator, in appropriate form, a request for investigation of a member of the bar.

(C) Duty to Assist Administrator. An attorney shall assist the administrator in the investigation, prosecution, and disposition of a request for investigation or complaint filed with or by the administrator.

Rule 9.104 Grounds for Discipline in General; Adjudication Elsewhere

(A) The following acts or omissions by an attorney, individually or in concert with another person, are misconduct and grounds for discipline, whether or not occurring in the course of an attorney-client relationship:

- (1) conduct prejudicial to the proper administration of justice;
- (2) conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach;
- (3) conduct that is contrary to justice, ethics, honesty, or good morals;
- (4) conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court;
- (5) conduct that violates a criminal law of a state or of the United States;
- (6) knowing misrepresentation of any facts or circumstances surrounding a request for investigation or complaint;
- (7) failure to answer a request for investigation or complaint in conformity with MCR 9.113 and 9.115(D);
- (8) contempt of the board or a hearing panel; or
- (9) violation of an order of discipline.

(B) Proof of an adjudication of misconduct in a disciplinary proceeding by another state or a United States court is conclusive proof of misconduct in a disciplinary proceeding in Michigan. The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the

original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate.

Rule 9.105 Purpose and Funding of Disciplinary Proceedings

Discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public, the courts, and the legal profession. The fact that certain misconduct has remained unchallenged when done by others or when done at other times or has not been earlier made the subject of disciplinary proceedings is not an excuse. The legal profession, through the State Bar of Michigan, is responsible for the reasonable and necessary expenses of the board, the commission, and the administrator, as determined by the Supreme Court. Commissioners of the State Bar of Michigan may not represent respondents in proceedings before the board, including preliminary discussions with commission employees prior to the filing of a request for investigation.

Rule 9.106 Types of Discipline; Minimum Discipline; Admonishment

Misconduct is grounds for:

- (1) revocation of the license to practice law in Michigan;
- (2) suspension of the license to practice law in Michigan for a specified term, not less than 30 days, with such additional conditions relevant to the established misconduct as a hearing panel, the board, or the Supreme Court may impose, and, if the term exceeds 179 days, until the further order of a hearing panel, the board, or the Supreme Court;
- (3) reprimand with such conditions relevant to the established misconduct as a hearing panel, the board, or the Supreme Court may impose;
- (4) probation ordered by a hearing panel, the board, or the Supreme Court under MCR 9.121(C);
- (5) requiring restitution, in an amount set by a hearing panel, the board, or the Supreme Court, as a condition of an order of discipline; or
- (6) with the respondent's consent, admonishment by the commission without filing a complaint. An admonition does not constitute discipline and shall be confidential under MCR 9.126 except as provided by MCR 9.115(J)(3). The administrator shall notify the respondent of the provisions of this rule and the respondent may, within 21 days of service of the admonition, notify the commission in writing that respondent objects to the admonition. Upon timely receipt of the written objection, the commission shall vacate the admonition and either dismiss the request for investigation or authorize the filing of a complaint.

Rule 9.107 Rules Exclusive on Discipline

(A) Proceedings for Discipline. Subchapter 9.100 governs the procedure to discipline attorneys. A proceeding under subchapter 9.100 is subject to the superintending control of the Supreme Court. An investigation or proceeding may

not be held invalid because of a nonprejudicial irregularity or an error not resulting in a miscarriage of justice.

(B) Local Bar Associations. A local bar association may not conduct a separate proceeding to discipline an attorney, but must assist and cooperate with the administrator in reporting and investigating alleged misconduct of an attorney.

Rule 9.108 Attorney Grievance Commission

(A) Authority of Commission. The Attorney Grievance Commission is the prosecution arm of the Supreme Court for discharge of its constitutional responsibility to supervise and discipline Michigan attorneys and those temporarily admitted to practice under MCR 8.126.

(B) Composition. The commission consists of 3 laypersons and 6 attorneys appointed by the Supreme Court. The members serve 3-year terms. A member may not serve more than 2 full terms.

(C) Chairperson and Vice-Chairperson. The Supreme Court shall designate from among the members of the commission a chairperson and a vice-chairperson who shall serve 1-year terms in those offices. The commencement and termination dates for the 1-year terms shall coincide appropriately with the 3-year membership terms of those officers and the other commission members. The Supreme Court may reappoint these officers for additional terms and may remove these officers prior to the expiration of a term. An officer appointed to fill a mid-term vacancy shall serve the remainder of that term and may be reappointed to serve a full term.

(D) Internal Rules.

(1) The commission must elect annually from among its membership a secretary to keep the minutes of the commission's meetings and issue the required notices.

(2) Five members constitute a quorum. The commission acts by majority vote of the members present.

(3) The commission must meet monthly at a time and place the chairperson designates. Notice of a regular monthly meeting is not required.

(4) A special meeting may be called by the chairperson or by petition of 3 commission members on 7 days' written notice. The notice may be waived in writing or by attending the meeting.

(E) Powers and Duties. The commission has the power and duty to:

(1) recommend attorneys to the Supreme Court for appointment as administrator and deputy administrator;

(2) supervise the investigation of attorney misconduct, including requests for investigation of and complaints against attorneys;

(3) supervise the administrator and his or her staff;

(4) seek an injunction from the Supreme Court against an attorney's misconduct when prompt action is required, even if a disciplinary proceeding concerning that conduct is not pending before the board;

- (5) annually write a budget for the commission and the administrator's office (including compensation) and submit it to the Supreme Court for approval;
- (6) submit to the Supreme Court proposed changes in these rules;
- (7) report to the Supreme Court at least quarterly regarding its activities, and to submit a joint annual report with the Attorney Discipline Board that summarizes the activities of both agencies during the past year; and
- (8) compile and maintain a list of out-of-state attorneys who have been admitted to practice temporarily and the dates those attorneys were admitted, and otherwise comply with the requirements of MCR 8.126, and
- (9) perform other duties provided in these rules.

Rule 9.109 Grievance Administrator

(A) Appointment. The administrator and the deputy administrator must be attorneys. The commission shall recommend one or more candidates for appointment as administrator and deputy administrator. The Supreme Court shall appoint the administrator and the deputy administrator, may terminate their appointments at any time with or without cause, and shall determine their salaries and the other terms and conditions of their employment.

(B) Powers and Duties. The administrator has the power and duty to:

- (1) employ or retain attorneys, investigators, and staff with the approval of the commission;
- (2) supervise the attorneys, investigators, and staff;
- (3) assist the public in preparing requests for investigation;
- (4) maintain the commission records created as a result of these rules;
- (5) investigate alleged misconduct of attorneys, including serving a request for investigation in his or her own name if necessary;
- (6) prosecute complaints the commission authorizes;
- (7) prosecute or defend reviews and appeals as the commission authorizes; and
- (8) perform other duties provided in these rules or assigned by the commission.

(C) Legal Counsel for the Administrator.

(1) The administrator may appoint and retain volunteer legal counsel needed to prosecute proceedings under these rules.

(2) Legal counsel may

- (a) prepare and file complaints and notices of hearings;
- (b) present evidence relating to complaints or petitions for reinstatement;
- (c) prepare and file arguments and briefs;
- (d) inform the administrator about the progress of cases assigned; and
- (e) perform other duties assigned by the administrator.

Rule 9.110 Attorney Discipline Board

(A) Authority of Board. The Attorney Discipline Board is the adjudicative arm of the Supreme Court for discharge of its exclusive constitutional responsibility to supervise and discipline Michigan attorneys.

(B) Composition. The board consists of 6 attorneys and 3 laypersons appointed by the Supreme Court. The members serve 3-year terms. A member may not serve more than 2 full terms.

(C) Chairperson and Vice-Chairperson. The Supreme Court shall designate from among the members of the board a chairperson and a vice-chairperson who shall serve 1-year terms in those offices. The commencement and termination dates of the 1-year terms shall coincide appropriately with the 3-year board terms of those officers and the other board members. The Supreme Court may reappoint these officers for additional terms and may remove an officer prior to the expiration of a term. An officer appointed to fill a midterm vacancy shall serve the remainder of that term and may be reappointed to serve a full term.

(D) Internal Rules.

(1) The board must elect annually from among its membership a secretary to supervise the keeping of the minutes of the board's meetings and the issuance of the required notices.

(2) Five members constitute a quorum. The board acts by a majority vote of the members present.

(3) The board shall meet monthly as often as necessary to maintain a current docket, but no less than every 2 months, at a time and place the chairperson designates.

(4) A special meeting may be called by the chairperson or by petition of 3 board members on 7 days' written notice. The notice may be waived in writing or by attending the meeting.

(E) Powers and Duties. The board has the power and duty to:

(1) appoint an attorney to serve as its general counsel and executive director;

(2) appoint hearing panels and masters;

(3) assign a complaint to a hearing panel or to a master;

(4) on request of the respondent, the administrator, or the complainant, review a final order of discipline or dismissal by a hearing panel;

(5) discipline and reinstate attorneys under these rules;

(6) file with the Supreme Court clerk its orders of suspension, disbarment, and reinstatement;

(7) annually write a budget for the board and submit it to the Supreme Court for approval;

- (8) report to the Supreme Court at least quarterly regarding its activities, and to submit a joint annual report with the Attorney Grievance Commission that summarizes the activities of both agencies during the past year; and
- (9) submit to the Supreme Court proposed changes in these rules.

Rule 9.111 Hearing Panels

(A) Composition; Quorum. The board must annually appoint 3 attorneys to each hearing panel and must fill a vacancy as it occurs. Following appointment, the board may designate the panel's chairperson, vice-chairperson and secretary. Thereafter, a hearing panel may elect a chairperson, vice-chairperson and secretary. A hearing panel must convene at the time and place designated by its chairperson or by the board. Two members constitute a quorum. A hearing panel acts by a majority vote. If a panel is unable to reach a majority decision, the matter shall be referred to the board for reassignment to a new panel.

(B) Powers and Duties. A hearing panel shall do the following:

- (1) Hold a public hearing on a complaint or reinstatement petition assigned to it within 56 days after the date the complaint is filed with the board or the date that notice of the reinstatement petition is published. A hearing must be concluded within 91 days after it is begun, unless the board grants an extension for good cause.
- (2) Receive evidence and make written findings of fact.
- (3) Discipline and reinstate attorneys or dismiss a complaint by order, under these rules.
- (4) Report its actions to the board within 28 days after the conclusion of a hearing.
- (5) Perform other duties provided in these rules.

Rule 9.112 Requests for Investigation

(A) Availability to Public. The administrator shall furnish a form for a request for investigation to a person who alleges misconduct against an attorney. Forms must be available to the public through each state bar office and county clerk's office. Use of the form is not required for filing a request for investigation.

(B) Form of Request. A request for investigation of alleged misconduct must

- (1) be in writing;
- (2) describe the alleged misconduct, including the approximate time and place of it;
- (3) be signed by the complainant; and
- (4) be filed with the administrator.

(C) Handling by Administrator.

- (1) Request for Investigation of Attorney. After making a preliminary investigation, the administrator shall either

(a) notify the complainant and the respondent that the allegations of the request for investigation are inadequate, incomplete, or insufficient to warrant the further attention of the commission; or

(b) serve a copy of the request for investigation on the respondent by ordinary mail at the respondent's address on file with the State Bar as required by Rule 2 of the Supreme Court Rules Concerning the State Bar of Michigan. Service is effective at the time of mailing, and nondelivery does not affect the validity of service. If a respondent has not filed an answer, no formal complaint shall be filed with the board unless the administrator has served the request for investigation by registered or certified mail return receipt requested.

(2) Request for Investigation of Judge. The administrator shall forward to the Judicial Tenure Commission a request for investigation of a judge, even if the request arises from the judge's conduct before he or she became a judge or from conduct unconnected with his or her judicial office. MCR 9.116 thereafter governs.

(3) Request for Investigation of Member or Employee of Commission or Board. Except as modified by MCR 9.131, MCR 9.104-9.130 apply to a request for investigation of an attorney who is a member of or is employed by the board or the commission.

(D) Subpoenas.

(1) After the request for investigation has been served on the respondent, the commission may issue subpoenas to require the appearance of a witness or the production of documents or other tangible things concerning matters then under investigation. Documents or other tangible things so produced may be subjected to nondestructive testing. Subpoenas shall be returnable before the administrator or a person designated by the administrator.

(2) A person who without just cause, after being commanded by a subpoena, fails or refuses to appear or give evidence, to be sworn or affirmed, or to answer a proper question after being ordered to do so is in contempt. The administrator may initiate a contempt proceeding under MCR 3.606 in the circuit court for the county where the act or refusal to act occurred.

(3) A subpoena issued pursuant to this subrule and certified by the commission chairperson shall be sufficient authorization for taking a deposition or seeking the production of evidence outside the State of Michigan. If the deponent or the person possessing the subpoenaed evidence will not comply voluntarily, the proponent of the subpoena may utilize MCR 2.305(D) or any similar provision in a statute or court rule of Michigan or of the state, territory, or country where the deponent or possessor resides or is present.

Rule 9.113 Answer by Respondent

(A) Answer. Within 21 days after being served with a request for investigation under MCR 9.112(C)(1)(b), the respondent shall file with the administrator a signed, written answer in duplicate fully and fairly disclosing all the facts and

circumstances pertaining to the alleged misconduct. The administrator may allow further time to answer. Misrepresentation in the answer is grounds for discipline. The administrator shall provide a copy of the answer and any supporting documents to the person who filed the request for investigation unless the administrator determines that there is cause for not disclosing some or all of the documents.

(B) Refusal or Failure to Answer.

(1) A respondent may refuse to answer a request for investigation on expressed constitutional or professional grounds.

(2) The failure of a respondent to answer within the time permitted is misconduct. See MCR 9.104(A)(7).

(3) If a respondent refuses to answer under subrule (B)(1), the refusal may be submitted to a hearing panel for adjudication.

(C) Attorney-Client Privilege. A person who files a request for investigation of an attorney waives any attorney-client privilege that he or she may have as to matters relating to the request for the purposes of the commission's investigation.

Rule 9.114 Action by Administrator or Commission After Answer

(A) Action After Investigation. After an answer is filed or the time for filing an answer has expired, the administrator may assign the matter for further investigation, including, if necessary, an informal hearing. When the investigation is complete, the administrator shall either

(1) dismiss the request for investigation and notify the complainant and the respondent of the reasons for the dismissal, or

(2) refer the matter to the commission for its review. The commission may direct that a complaint be filed, that the request be dismissed, or that the respondent be admonished with the respondent's consent.

(B) Contractual Probation. For purposes of this subrule, "contractual probation" means the placement of a consenting respondent on probation by the commission, without the filing of formal charges. Contractual probation does not constitute discipline, and shall be confidential under MCR 9.126 except as provided by MCR 9.115(J)(3).

(1) If the commission finds that the alleged misconduct, if proven, would not result in a substantial suspension or revocation of a respondent's license to practice law, the commission may defer disposition of the matter and place the respondent on contractual probation for a period not to exceed two years, provided the following criteria are met:

(a) the misconduct is significantly related to a substance abuse problem of the respondent,

(b) the terms and conditions of the contractual probation, which shall include an appropriate period of treatment, are agreed upon by the grievance administrator and the respondent prior to submission to the commission for consideration, and

(c) the commission determines that contractual probation is appropriate and in the best interests of the public, the courts, the legal profession, and the respondent.

(2) The respondent is responsible for any costs associated with the contractual probation and related treatment.

(3) Upon written notice to the respondent and an opportunity to file written objections, the commission may terminate the contractual probation and file a formal complaint or take other appropriate action based on the misconduct, if

(a) the respondent fails to satisfactorily complete the terms and conditions of the contractual probation, or

(b) the commission concludes that the respondent has committed other misconduct that warrants the filing of a formal complaint.

(4) The placing of a respondent on contractual probation shall constitute a final disposition that entitles the complainant to notice in accordance with MCR 9.114(D), and to file an action in accordance with MCR 9.122(A)(2).

(C) Assistance of Law Enforcement Agencies. The administrator may request a law enforcement office to assist in an investigation by furnishing all available information about the respondent. Law enforcement officers are requested to comply promptly with each request.

(D) Report by Administrator. The administrator shall inform the complainant and, if the respondent answered, the respondent, of the final disposition of every request for investigation dismissed by the commission without a hearing before a hearing panel.

(E) Retention of Records. All files and records relating to allegations of misconduct by an attorney must be retained by the commission for the lifetime of the attorney, except as follows:

(1) The administrator may destroy the files or records relating to a request for investigation dismissed by the commission after 3 years have elapsed from the date of dismissal.

(2) If no request for investigation was pending when the files or records were created or acquired, and no related request for investigation was filed subsequently, the administrator may destroy the files or records after 3 years have elapsed from the date when they were created or acquired by the commission.

Rule 9.115 Hearing Panel Procedure

(A) Rules Applicable. Except as otherwise provided in these rules, the rules governing practice and procedure in a nonjury civil action apply to a proceeding before a hearing panel. Pleadings must conform as nearly as practicable to the requirements of subchapter 2.100. The original of the formal complaint and all other pleadings must be filed with the board. The formal complaint must be served on the respondent. All other pleadings must be served on the opposing party and each member of the hearing panel. Proof of service of the formal complaint may be

filed at any time prior to the date of the hearing. Proof of service of all other pleadings must be filed with the original pleadings.

(B) Complaint. Except as provided by MCR 9.120, a complaint setting forth the facts of the alleged misconduct begins proceedings before a hearing panel. The administrator shall prepare the complaint, file it with the board, and serve it on the respondent and, if the respondent is a member of or is associated with a law firm, on the firm. The unwillingness of a complainant to prosecute, or a settlement between the complainant and the respondent, does not itself affect the right of the administrator to proceed.

(C) Service. Service of the complaint and all subsequent pleadings and orders must be made by personal service or by registered or certified mail addressed to the person at the person's last known address. An attorney's last known address is the address on file with the state bar as required by Rule 2 of the Supreme Court Rules Concerning the State Bar of Michigan. A respondent's attorney of record must also be served, but service may be made under MCR 2.107. Service is effective at the time of mailing, and nondelivery does not affect the validity of the service.

(D) Answer.

(1) Within 21 days after the complaint is served, the respondent shall file and serve a signed answer as provided in subrule (A).

(2) A default, with the same effect as a default in a civil action, may enter against a respondent who fails within the time permitted to file an answer admitting, denying, or explaining the complaint, or asserting the grounds for failing to do so.

(E) Representation by Attorney. The respondent may be represented by an attorney, who must enter an appearance.

(F) Prehearing Procedure.

(1) Extensions. If good cause is shown, the hearing panel chairperson may grant one extension of time per party for filing pleadings and may grant one adjournment per party. Additional requests may be granted by the board chairperson if good cause is shown. Pending criminal or civil litigation of substantial similarity to the allegations of the complaint is not necessarily grounds for an adjournment.

(2) Motion to Disqualify.

(a) Within 14 days after an answer has been filed or the time for filing the answer has expired, each member of the hearing panel shall disclose in a writing filed with the board any information that the member believes could be grounds for disqualification under the guidelines of MCR 2.003(B). The duty to disclose shall be a continuing one. The board shall serve a copy of the disclosure on each party.

(b) Within 14 days after the board serves a copy of a written disclosure, the respondent or the administrator may move to disqualify a member of the hearing panel. The board chairperson shall decide the motion under the guidelines of MCR 2.003.

(c) The board must assign a substitute for a disqualified member of a hearing panel. If all are disqualified, the board must reassign the complaint to another panel.

(3) Amendment of Pleadings. The administrator and the respondent each may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by the opposing party, or within 15 days after serving the pleading if it does not require a responsive pleading. Otherwise, a party may amend a pleading only by leave granted by the hearing panel chairperson or with the written consent of the adverse party.

(4) Discovery. Pretrial or discovery proceedings are not permitted, except as follows:

(a) Within 21 days of the service of a formal complaint, a party may demand in writing that documentary evidence that is to be introduced at the hearing by the opposing party be made available for inspection or copying. Within 14 days after service of a written demand, the documents shall be made available, provided that the administrator need not comply prior to the filing of the respondent's answer; in such case, the administrator shall comply with the written demand within 14 days of the filing of the respondent's answer. The respondent shall comply with the written demand within 14 days, except that the respondent need not comply until the time for filing an answer to the formal complaint has expired. Any other documentary evidence to be introduced at the hearing by either party shall be supplied to the other party no later than 14 days prior to the hearing. Any documentary evidence not so supplied shall be excluded from the hearing except for good cause shown.

(b) Within 21 days of the service of a formal complaint, a party may demand in writing that the opposing party supply written notification of the name and address of any person to be called as a witness. Within 14 days after the service of a written demand, the notification shall be supplied. However, the administrator need not comply prior to the filing of the respondent's answer to the formal complaint; in such cases, the administrator shall comply with the written demand within 14 days of the filing of the respondent's answer to the formal complaint. The respondent shall comply with the written demand within 14 days, except that the respondent need not comply until the time for filing an answer to the formal complaint has expired. Except for good cause shown, a party who is required to give said notification must give supplemental notice to the adverse party within 7 days after any additional witness has been identified, and must give the supplemental notice immediately if the additional witness is identified less than 14 days before a scheduled hearing.

Upon receipt of a demand made pursuant to this rule, a party must also provide to the other party any statements given by witnesses to be called at the hearing. Witness statements include stenographic, recorded, or written statements of witnesses provided to the administrator, the respondent, or the respondent's representative. The term "written statement" does not

include notes or memoranda prepared by a party or a party's representative of conversations with witnesses, or other privileged information.

(c) A deposition may be taken of a witness who lives outside the state or is physically unable to attend the hearing. For good cause shown, the hearing panel may allow the parties to depose other witnesses.

(d) The hearing panel may order a prehearing conference held before a panel member to obtain admissions or otherwise narrow the issues presented by the pleadings.

If a party fails to comply with subrule (F)(4)(a) or (b), the hearing panel or the board may, on motion and showing of material prejudice as a result of the failure, impose one or more of the sanctions set forth in MCR 2.313(B)(2)(a)-(c).

(5) Discipline by Consent. A respondent may offer to plead nolo contendere or to admit all essential facts contained in the complaint or any of its allegations in exchange for a stated form of discipline and on the condition that the plea or admission and discipline agreed on is accepted by the commission and the hearing panel. The respondent's offer shall first be submitted to the commission. If the offer is accepted by the commission, the administrator and the respondent shall prepare a stipulation for a consent order of discipline and file the stipulation with the hearing panel. At the time of the filing, the administrator shall serve a copy of the proposed stipulation upon the complainant. If the hearing panel approves the stipulation, it shall enter a final order of discipline. If not approved, the offer is deemed withdrawn and statements or stipulations made in connection with the offer are inadmissible in disciplinary proceedings against the respondent and not binding on the respondent or the administrator. If the stipulation is not approved, the matter must then be referred for hearing to a hearing panel other than the one that passed on the proposed discipline.

(G) Hearing Time and Place; Notice. The board or the chairperson of the hearing panel shall set the time and place for a hearing. Notice of a hearing must be served by the board or the chairperson of the hearing panel on the administrator, the respondent, the complainant, and any attorney of record at least 21 days before the initial hearing. Unless the board or the chairperson of the hearing panel otherwise directs, the hearing must be in the county in which the respondent has or last had an office or residence. If the hearing panel fails to convene or complete its hearing within a reasonable time, the board may reassign the complaint to another panel or to a master. A party may file a motion for a change of venue. The motion must be filed with the board and shall be decided by the board chairperson, in part, on the basis of the guidelines in MCR 2.221.

(H) Respondent's Appearance. The respondent shall personally appear at the hearing and is subject to cross-examination as an opposite party under MCL 600.2161. If the respondent, or the respondent's attorney on his or her behalf, claims physical or mental incapacity as a reason for the respondent's failure to appear before a hearing panel or the board, the panel or the board on its own initiative may suspend the respondent from the practice of law until further order of

the panel or board. The order of suspension must be filed and served as other orders of discipline.

(I) Hearing; Contempt.

(1) A hearing panel may issue subpoenas (including subpoenas for production of documents and other tangible things), cause testimony to be taken under oath, and rule on the admissibility of evidence under the Michigan Rules of Evidence. The oath or affirmation may be administered by a panel member. A subpoena must be issued in the name and under the seal of the board. It must be signed by a panel or board member, by the administrator, or by the respondent or the respondent's attorney. A subpoenaed witness must be paid the same fee and mileage as a witness subpoenaed to testify in the circuit court. Parties must notify their own witnesses of the date, time, and place of the hearing.

(2) A person who without just cause fails or refuses to appear and give evidence as commanded by a subpoena, to be sworn or affirmed, or to answer a proper question after he or she has been ordered to do so, is in contempt. The administrator may initiate a contempt proceeding under MCR 3.606 in the circuit court for the county where the act or refusal to act occurred.

(J) Decision.

(1) The hearing panel must file a report on its decisions regarding the misconduct charges and, if applicable, the resulting discipline. The report must include a certified transcript, a summary of the evidence, pleadings, exhibits and briefs, and findings of fact. The discipline section of the report must also include a summary of all previous misconduct for which the respondent was disciplined or admonished.

(2) Upon a finding of misconduct, the hearing panel shall conduct a separate hearing to determine the appropriate discipline. The hearing on discipline shall be conducted as soon after the finding of misconduct as is practicable and may be held immediately following the panel's ruling that misconduct has been established.

(3) If the hearing panel finds that the charge of misconduct is established by a preponderance of the evidence, it must enter an order of discipline. The order shall take effect 21 days after it is served on the respondent unless the panel finds good cause for the order to take effect on a different date, in which event the panel's decision must explain the reasons for ordering a different effective date. In determining the discipline to be imposed, any and all relevant evidence of aggravation or mitigation shall be admissible, including previous admonitions and orders of discipline, and the previous placement of the respondent on contractual probation.

(4) If the hearing panel finds that the charge of misconduct is not established by a preponderance of the evidence, it must enter an order dismissing the complaint.

(5) The report and order must be signed by the panel chairperson and filed with the board and the administrator. A copy must be served on the parties as required by these rules.

(K) Stay of Discipline. If a discipline order is a suspension of 179 days or less, a stay of the discipline order will automatically issue on the timely filing by the respondent of a petition for review and a petition for a stay of the discipline. If the discipline ordered is more severe than a suspension of 179 days, the respondent may petition the board for a stay pending review of the discipline order. Once granted, a stay remains effective until the further order of the board.

(L) Enforcement. The administrator shall take the necessary steps to enforce a discipline order after it is effective.

(M) Resignation by Respondent; Admission of Charges. An attorney's request that his or her name be stricken from the official register of attorneys may not be accepted while a request for investigation or a complaint is pending, except pursuant to an order of revocation.

Rule 9.116 Hearing Procedure; Judges other than Magistrates and Referees

(A) Application of this Rule. This rule governs an action by the commission against a judge, except that it does not apply to an action against a magistrate or referee for misconduct separately arising from the practice of law, whether before or during the period when the person serves as a magistrate or referee.

(B) Time. The commission may not take action against a judge unless and until the Judicial Tenure Commission recommends a sanction. Then, notwithstanding the pendency of certification to and review by the Supreme Court of the Judicial Tenure Commission's action, the commission may, without an investigation, direct the administrator to file a complaint with the board.

(C) Complaint; Time and Place of Hearing; Answer. The administrator shall file a complaint setting forth the facts of the alleged misconduct within 14 days after the Judicial Tenure Commission files its order with the Supreme Court. The chairperson of the hearing panel assigned by the board shall designate a place and a time for the hearing no later than 21 days after the complaint is filed. The complaint and notice of the hearing must be served within 7 days after the complaint is filed. Within 14 days after the complaint and notice of the hearing are served, the respondent judge shall file an answer.

(D) Rules Applicable; Judicial Tenure Commission Record. To the extent it is consistent with this rule, MCR 9.115 governs hearing procedure against a respondent judge. The record of the Judicial Tenure Commission proceeding is admissible at the hearing. The administrator or the respondent may introduce additional evidence.

(E) Decision. Within 28 days after the hearing is concluded, the panel must file with the Supreme Court clerk and the board a report and order conforming with MCR 9.115(J) and serve them on the administrator and the respondent.

(1) If the Judicial Tenure Commission has recommended suspension, the panel may not disbar the respondent and may not suspend the respondent from

practicing law for a period beginning earlier than or extending beyond the suspension period recommended by the Judicial Tenure Commission.

(2) If the Judicial Tenure Commission has not recommended either suspension or removal from office, and the respondent continues to hold a judicial office, then the panel may not disbar or suspend the respondent.

(3) If the Judicial Tenure Commission has recommended removal from office, or if the respondent no longer holds a judicial office, then the panel may impose any type of discipline authorized by these rules.

(F) Appeal. The respondent-judge may file a petition for review under MCR 9.118.

Rule 9.117 Hearing Procedure Before Master

If the board assigns a complaint to a master, the master shall hold a public hearing on the complaint and receive evidence. To the extent that MCR 9.115 may be applied, it governs procedure before a master. After the hearing, the master shall prepare a report containing

- (1) a brief statement of the proceedings,
- (2) findings of fact, and
- (3) conclusions of law.

The master shall file the report with a hearing panel designated by the board and serve a copy on the administrator and the respondent. Within 14 days after the report is filed, the administrator or the respondent may file objections to the report and a supporting brief. The panel must determine if the record supports the findings of fact and conclusions of law and impose discipline, if warranted. Further proceedings are governed by MCR 9.118.

Rule 9.118 Review of Order of Hearing Panel

(A) Review of Order; Time.

(1) The administrator, the complainant, or the respondent may petition the board in writing to review the order of a hearing panel filed under MCR 9.115, 9.116, 9.121 or 9.124. A petition for review must set forth the reasons and the grounds on which review is sought and must be filed with the board within 21 days after the order is served. The petitioner must serve copies of the petition and the accompanying documents on the other party and the complainant and file a proof of service with the board.

(2) A cross-petition for review may be filed within 21 days after the petition for review is served on the cross-petitioner. The cross-petition must be served on the other party and the complainant, and a proof of service must be filed with the board.

(3) A delayed petition for review may be considered by the board chairperson under the guidelines of MCR 7.205(F). If a petition for review is filed more than 12 months after the order of the hearing panel is entered, the petition may not be granted.

(B) Order to Show Cause. If a petition for review is timely filed or a delayed petition for review is accepted for filing, the board shall issue an order to show cause, at a date and time specified, why the order of the hearing panel should not be affirmed. The order shall establish a briefing schedule for all parties and may require that an answer to the petition or cross-petition be filed. An opposing party may file an answer even if the order does not require one. The board must serve the order to show cause on the administrator, respondent, and complainant at least 21 days before the hearing. Failure to comply with the order to show cause, including, but not limited to, a requirement for briefs, may be grounds for dismissal of a petition for review. Dismissal of a petition for review shall not affect the validity of a cross-petition for review.

(C) Hearing.

(1) A hearing on the order to show cause must be heard by a subboard of at least 3 board members assigned by the chairperson. The board must make a final decision on consideration of the whole record, including a transcript of the presentation made to the subboard and the subboard's recommendation. The respondent shall appear personally at the review hearing unless excused by the board. Failure to appear may result in denial of any relief sought by the respondent, or any other action allowable under MCR 9.118(D).

(2) If the board believes that additional testimony should be taken, it may refer the case to a hearing panel or a master. The panel or the master shall then take the additional testimony and make a supplemental report, including a transcript of the additional testimony, pleadings, exhibits, and briefs with the board. Notice of the filing of the supplemental report and a copy of the report must be served as an original report and order of a hearing panel.

(D) Decision. After the hearing on the order to show cause, the board may affirm, amend, reverse, or nullify the order of the hearing panel in whole or in part or order other discipline. A discipline order is not effective until 28 days after it is served on the respondent unless the board finds good cause for the order to take effect earlier.

(E) Motion for Reconsideration; Stay. A motion for reconsideration may be filed at any time before the board's order takes effect. An answer to a motion for reconsideration may be filed. The board may grant a stay pending its decision on a motion for reconsideration. If the board grants a stay, the stay remains effective for 28 days after the board enters its order granting or denying reconsideration. In the absence of an order by the board, the filing of a motion for reconsideration does not stay an order of discipline.

(F) Filing Orders. The board must file a copy of its discipline order with the Supreme Court clerk and the clerk of the county where the respondent resides and where his or her office is located. The order must be served on all parties. If the respondent requests it in writing, a dismissal order must be similarly filed and served.

Rule 9.119 Conduct of Disbarred, Suspended, or Inactive Attorneys

(A) Notification to Clients. An attorney whose license is revoked or suspended, or who is transferred to inactive status pursuant to MCR 9.121, or who is suspended for nondisciplinary reasons pursuant to Rule 4 of the Supreme Court Rules Concerning the State Bar of Michigan, shall, within 7 days of the effective date of the order of discipline, the transfer to inactive status or the nondisciplinary suspension, notify all of his or her active clients, in writing, by registered or certified mail, return receipt requested, of the following:

- (1) the nature and duration of the discipline imposed, the transfer to inactive status, or the nondisciplinary suspension;
- (2) the effective date of such discipline, transfer to inactive status, or nondisciplinary suspension;
- (3) the attorney's inability to act as an attorney after the effective date of such discipline, transfer to inactive status, or nondisciplinary suspension;
- (4) the location and identity of the custodian of the clients' files and records, which will be made available to them or to substitute counsel;
- (5) that the clients may wish to seek legal advice and counsel elsewhere; provided that, if the disbarred, suspended or inactive attorney was a member of a law firm, the firm may continue to represent each client with the client's express written consent;
- (6) the address to which all correspondence to the attorney may be addressed.

(B) Conduct in Litigated Matters. In addition to the requirements of subsection (A) of this rule, the affected attorney must, by the effective date of the order of revocation, suspension, or transfer to inactive status, in every matter in which the attorney is representing a client in litigation, file with the tribunal and all parties a notice of the attorney's disqualification from the practice of law.

(C) Filing of Proof of Compliance. Within 14 days after the effective date of the order of revocation, suspension, or transfer to inactive status pursuant to MCR 9.121, the disbarred, suspended, or inactive attorney shall file with the administrator and the board an affidavit showing full compliance with this rule. The affidavit must include as an appendix copies of the disclosure notices and mailing receipts required under subrules (A) and (B) of this rule. A disbarred, suspended, or inactive attorney shall keep and maintain records of the various steps taken under this rule so that, in any subsequent proceeding instituted by or against him or her, proof of compliance with this rule and with the disbarment or suspension order will be available.

(D) Conduct After Entry of Order Prior to Effective Date. A disbarred or suspended attorney, after entry of the order of revocation or suspension and prior to its effective date, shall not accept any new retainer or engagement as attorney for another in any new case or legal matter of any nature, unless specifically authorized by the board chairperson upon a showing of good cause and a finding that it is not contrary to the interests of the public and profession. However, during the period between the entry of the order and its effective date, the suspended or

disbarred attorney may complete, on behalf of any existing client, all matters that were pending on the entry date.

(E) Conduct After Effective Date of Order. An attorney who is disbarred or suspended, or who is transferred to inactive status pursuant to MCR 9.121 is, during the period of disbarment, suspension, or inactivity forbidden from:

- (1) practicing law in any form;
- (2) appearing as an attorney before any court, judge, justice, board, commission, or other public authority; and
- (3) holding himself or herself out as an attorney by any means.

(F) Compensation of Disbarred, Suspended, or Inactive Attorney. An attorney whose license is revoked or suspended, or who is transferred to inactive status pursuant to MCR 9.121 may not share in any legal fees for legal services performed by another attorney during the period of disqualification from the practice of law. A disbarred, suspended, or inactive attorney may be compensated on a quantum meruit basis for legal services rendered and expenses paid by him or her prior to the effective date of the revocation, suspension, or transfer to inactive status.

(G) Inventory. If the attorney whose license is revoked or suspended, or who is transferred to inactive status pursuant to MCR 9.121 was a member of a firm, the firm may continue to represent each client with the client's express written consent. If an attorney is transferred to inactive status or is disbarred or suspended and fails to give notice under the rule, or disappears or dies, and there is no partner, executor or other responsible person capable of conducting the attorney's affairs, the administrator may ask the chief judge in the judicial circuit in which the attorney maintained his or her practice to appoint a person to inventory the attorney's files and to take any action necessary to protect the interests of the attorney and the attorney's clients. The person appointed may not disclose any information contained in any inventoried file without the client's written consent. The person appointed is analogous to a receiver operating under the direction of the circuit court.

Rule 9.120 Conviction of Criminal Offense

(A) Notification of the Grievance Administrator and the Attorney Discipline Board. When a lawyer is convicted of a crime, the lawyer, the prosecutor or other authority who prosecuted the lawyer, and the defense attorney who represented the lawyer must notify the grievance administrator and the board of the conviction. This notice must be given in writing within 14 days after the conviction.

(B) Suspension.

- (1) On conviction of a felony, an attorney is automatically suspended until the effective date of an order filed by a hearing panel under MCR 9.115(J). A conviction occurs upon the return of a verdict of guilty or upon the acceptance of a plea of guilty or nolo contendere. The board may, on the attorney's motion, set aside the automatic suspension when it appears consistent with the maintenance of the integrity and honor of the profession, the protection of the public, and the interests of justice. The board must set aside the automatic

suspension if the felony conviction is vacated, reversed, or otherwise set aside for any reason by the trial court or an appellate court.

(2) In a disciplinary proceeding instituted against an attorney based on the attorney's conviction of a criminal offense, a certified copy of the judgment of conviction is conclusive proof of the commission of the criminal offense.

(3) The administrator may file with the board a judgment of conviction showing that an attorney has violated a criminal law of a state or of the United States. The board shall then order the attorney to show cause why a final order of discipline should not be entered, and the board shall refer the proceeding to a hearing panel for hearing. At the hearing, questions as to the validity of the conviction, alleged trial errors, and the availability of appellate remedies shall not be considered. After the hearing, the panel shall issue an order under MCR 9.115(J).

(C) Pardon; Conviction Reversed. On a pardon the board may, and on a reversal the board must, by order filed and served under MCR 9.118(E), vacate the suspension. The attorney's name must be returned to the roster of Michigan attorneys and counselors at law, but the administrator may nevertheless proceed against the respondent for misconduct which had led to the criminal charge.

Rule 9.121 Attorney Declared to be Incompetent or Alleged to be Incapacitated or Asserting Impaired Ability

(A) Adjudication by Court. If an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the board, on proper proof of the fact, must enter an order effective immediately transferring the attorney to inactive status for an indefinite period and until further order of the board.

(B) Allegations of Incompetency or Incapacity.

(1) If it is alleged in a complaint by the administrator that an attorney is incapacitated to continue the practice of law because of mental or physical infirmity or disability or because of addiction to drugs or intoxicants, a hearing panel shall take action necessary to determine whether the attorney is incapacitated, including an examination of the attorney by qualified medical experts the board designates.

(2) The hearing panel shall provide notice to the attorney of the proceedings and appoint an attorney to represent him or her if he or she is without representation.

(3) If, after a hearing, the hearing panel concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring him or her to inactive status for an indefinite period and until further order of the board.

(4) Pending disciplinary proceedings against the attorney must be held in abeyance.

(5) Proceedings conducted under this subrule are subject to review by the board as provided in MCR 9.118.

(C) Assertion of Impaired Ability; Probation.

(1) If, in response to a formal complaint filed under subrule 9.115(B), the respondent asserts in mitigation and thereafter demonstrates by a preponderance of the evidence that

(a) during the period when the conduct which is the subject of the complaint occurred, his or her ability to practice law competently was materially impaired by physical or mental disability or by drug or alcohol addiction,

(b) the impairment was the cause of or substantially contributed to that conduct,

(c) the cause of the impairment is susceptible to treatment, and

(d) he or she in good faith intends to undergo treatment, and submits a detailed plan for such treatment, the hearing panel, the board, or the Supreme Court may enter an order placing the respondent on probation for a specific period not to exceed 2 years if it specifically finds that an order of probation is not contrary to the public interest.

(2) If the respondent alleges impairment by physical or mental disability or by drug or alcohol addiction pursuant to subrule (C)(1), the hearing panel may order the respondent to submit to a physical or mental examination by a physician selected by the hearing panel or the board, which physician shall report to the hearing panel or board. The parties may obtain a psychiatric or medical evaluation at their own expense by examiners of their own choosing. No physician-patient privilege shall apply under this rule. The respondent's attorney may be present at an examination. A respondent who fails or refuses to comply with an examination order, or refuses to undergo an examination requested by the administrator, shall not be eligible for probation.

(3) The probation order may

(a) specify the treatment the respondent is to undergo,

(b) require the respondent to practice law only under the direct supervision of other attorneys, or

(c) include any other terms the evidence shows are likely to eliminate the impairment without subjecting the respondent's clients or the public to a substantial risk of harm because the respondent is permitted to continue to practice law during the probation period.

(4) The probation order expires on the date specified in it unless the administrator petitions for, and the hearing panel, board, or court grants, an extension. An extension may not exceed 2 years. A probation order may be dissolved if the respondent demonstrates that the impairment giving rise to the probation order has been removed and that the probation order has been fully complied with, but only one motion to accelerate dissolution of a probation order may be filed during the probation period.

(5) On proof that a respondent has violated a probation order, he or she may be suspended or disbarred.

(D) Publication of Change in Status. The board must publish in the Michigan Bar Journal a notice of transfer to inactive status. A copy of the notice and the order must be filed and served under MCR 9.118.

(E) Reinstatement. An attorney transferred to inactive status under this rule may not resume active status until reinstated by the board's order and, if inactive 3 years or more, recertified by the Board of Law Examiners. The attorney may petition for reinstatement to active status once a year or at shorter intervals as the board may direct. A petition for reinstatement must be granted by the board on a showing by clear and convincing evidence that the attorney's disability has been removed and that he or she is fit to resume the practice of law. The board may take the action necessary to determine whether the attorney's disability has been removed, including an examination of the attorney by qualified medical experts that the board designates. The board may direct that the expense of the examination be paid by the attorney. If an attorney was transferred to inactive status under subrule 9.121(A) and subsequently has been judicially declared to be competent, the board may dispense with further evidence that the disability has been removed and may order reinstatement to active status on terms it finds proper and advisable, including recertification.

(F) Waiver of Privilege. By filing a petition for reinstatement to active status under this rule, the attorney waives the doctor-patient privilege with respect to treatment during the period of his or her disability. The attorney shall disclose the name of every psychiatrist, psychologist, physician, and hospital or other institution by whom or in which the attorney has been examined or treated since the transfer to inactive status. The attorney shall furnish to the board written consent for each to divulge whatever information and records are requested by the board's medical experts.

Rule 9.122 Review by Supreme Court

(A) Kinds Available; Time for Filing.

(1) A party aggrieved, including the person who made a request for investigation, by a final order of discipline or dismissal entered by the board on review under MCR 9.118, may apply for leave to appeal to the Supreme Court under MCR 7.302 within 28 days after the order is entered. If a motion for reconsideration is filed before the board's order takes effect, the application for leave to appeal to the Supreme Court may be filed within 28 days after the board enters its order granting or denying reconsideration.

(2) If a request for investigation has been dismissed under MCR 9.112(C)(1) or 9.114(A), a party aggrieved by the dismissal may file a complaint in the Supreme Court under MCR 7.304.

(B) Rules Applicable. Except as modified by this rule, subchapter 7.300 governs an appeal.

(C) Stay of Order. If the discipline order is a suspension of 179 days or less, a stay of the order will automatically issue on the timely filing of an appeal by the respondent. The stay remains effective until conclusion of the appeal or further

order of the Supreme Court. The respondent may petition the Supreme Court for a stay pending appeal of other orders of the board.

(D) Record on Appeal. The original papers constitute the record on appeal. The board shall certify the original record and file it with the Supreme Court promptly after the briefs of the parties have been filed. The record must include a list of docket entries, a transcript of testimony taken, and all pleadings, exhibits, briefs, findings of fact, and orders in the proceeding. If the record contains material protected, the protection continues unless otherwise ordered by the Supreme Court.

(E) Disposition. The Supreme Court may make any order it deems appropriate, including dismissing the appeal. The parties may stipulate to dismiss the appeal with prejudice.

Rule 9.123 Eligibility for Reinstatement

(A) Suspension, 179 Days or Less. An attorney whose license has been suspended for 179 days or less is automatically reinstated by filing with the Supreme Court clerk, the board, and the administrator an affidavit showing that the attorney has fully complied with the terms and conditions of the suspension order. A false statement contained in the affidavit is ground for disbarment.

(B) Revocation or Suspension More Than 179 Days. An attorney whose license to practice law has been revoked or suspended for more than 179 days is not eligible for reinstatement until the attorney has petitioned for reinstatement under MCR 9.124 and has established by clear and convincing evidence that:

- (1) he or she desires in good faith to be restored to the privilege of practicing law in Michigan;
- (2) the term of the suspension ordered has elapsed or 5 years have elapsed since revocation of the license;
- (3) he or she has not practiced or attempted to practice law contrary to the requirement of his or her suspension or revocation;
- (4) he or she has complied fully with the order of discipline;
- (5) his or her conduct since the order of discipline has been exemplary and above reproach;
- (6) he or she has a proper understanding of and attitude toward the standards that are imposed on members of the bar and will conduct himself or herself in conformity with those standards;
- (7) taking into account all of the attorney's past conduct, including the nature of the misconduct which led to the revocation or suspension, he or she nevertheless can safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and as an officer of the court;
- (8) he or she is in compliance with the requirements of subrule (C), if applicable; and

(9) he or she has reimbursed the client security fund of the State Bar of Michigan or has agreed to an arrangement satisfactory to the fund to reimburse the fund for any money paid from the fund as a result of his or her conduct. Failure to fully reimburse as agreed is ground for revocation of a reinstatement.

(C) Reinstatement After Three Years. An attorney who, as a result of disciplinary proceedings, resigns, is disbarred, or is suspended for any period of time, and who does not practice law for 3 years or more, whether as the result of the period of discipline or voluntarily, must be recertified by the Board of Law Examiners before the attorney may be reinstated to the practice of law.

(D) Petition for Reinstatement; Filing Limitations.

(1) Except as provided in subrule (D)(3), an attorney whose license to practice law has been suspended may not file a petition for reinstatement earlier than 56 days before the term of suspension ordered has fully elapsed.

(2) An attorney whose license to practice law has been revoked may not file a petition for reinstatement until 5 years have elapsed since revocation of the license.

(3) An attorney whose license to practice law has been suspended because of conviction of a felony for which a term of incarceration was imposed may not file a petition for reinstatement until six months after completion of the sentence, including any period of parole.

(4) An attorney whose license to practice law has been revoked or suspended and who has been denied reinstatement may not file a new petition for reinstatement until at least 180 days from the effective date of the most recent hearing panel order granting or denying reinstatement.

Rule 9.124 Procedure for Reinstatement

(A) Filing of Petition. An attorney petitioning for reinstatement shall file the original petition for reinstatement with the Supreme Court clerk and a copy with the board and the commission.

(B) Petitioner's Responsibilities.

(1) Separately from the petition for reinstatement, the petitioner must serve only upon the administrator a personal history affidavit. The affidavit is to become part of the administrator's investigative file and may not be disclosed to the public except under the provisions of MCR 9.126. The following information must be attached to or contained in the affidavit:

(a) every residence address since the date of disqualification from the practice of law;

(b) employment history since the time of disqualification, including the nature of employment, the name and address of every employer, the duration of such employment, and the name of the petitioner's immediate supervisor at each place of employment; if requested by the grievance administrator, the petitioner must provide authorization to obtain a copy of the petitioner's personnel file from the employer;

- (c) a copy of a current driver's license;
 - (d) any continuing legal education in which the petitioner participated during the period of disqualification from the practice of law;
 - (e) bank account statements, from the date of disqualification until the filing of the petition for reinstatement, for each and every bank account in which petitioner is named in any capacity;
 - (f) copies of the petitioner's personal and business federal, state, and local tax returns from the date of disqualification until the filing of the petition for reinstatement, and if the petitioner owes outstanding income taxes, interest, and penalties, the petitioner must provide a current statement from the taxation authority of the current amount due; if requested by the grievance administrator, the petitioner must provide a waiver granting the grievance administrator authority to obtain information from the tax authority;
 - (g) any and all professional or occupational licenses obtained or maintained during the period of disqualification and whether any were suspended or revoked;
 - (h) any and all names used by petitioner since the time of disqualification;
 - (i) petitioner's place and date of birth;
 - (j) petitioner's social security number;
 - (k) whether, since the time of disqualification, petitioner was a party or a witness in any civil case, and the title, docket number, and court in which such case occurred;
 - (l) whether the petitioner was a party to any civil case, including the title, docket number, and court in which such case was filed; the petitioner must provide copies of the complaints and any dispositional orders or judgments, including settlement agreements, in such cases;
 - (m) whether the petitioner was a defendant or a witness in any criminal case, and the title, docket number, and court in which such case was filed; the petitioner must provide copies of the indictments or complaints and any dispositional orders or judgments of conviction in cases in which the petitioner was a defendant;
 - (n) whether the petitioner was subject to treatment or counseling for mental or emotional impairments, or for substance abuse or gambling addictions since the time of disqualification; if so, the petitioner must provide a current statement from the petitioner's service provider setting forth an evaluative conclusion regarding the petitioner's impairment(s), the petitioner's treatment records, and prognosis for recovery.
- (2) The petitioner must, contemporaneously with the filing of the petition for reinstatement and service on the administrator of the personal history affidavit, remit

(a) to the administrator the fee for publication of a reinstatement notice in the Michigan Bar Journal.

(b) to the board the basic administrative costs required under MCR 9.128(B)(1)

(i) an administrative cost of \$750 where the discipline imposed was a suspension of less than 3 years;

(ii) an administrative cost of \$1,500 where the discipline imposed was a suspension of 3 years or more or disbarment.

(3) If the petition is facially sufficient and the petitioner has provided proof of service of the personal history affidavit upon the administrator and paid the publication fee required by subrule (B)(2), the board shall assign the petition to a hearing panel. Otherwise, the board may dismiss the petition without prejudice.

(4) A petitioner who files the petition before the term of suspension ordered has fully elapsed must file an updated petition and serve upon the administrator an updated personal history affidavit within 14 days after the term of suspension ordered has fully elapsed. All petitioners remain under a continuing obligation to provide updated information bearing upon the petition or the personal history affidavit.

(5) The petitioner must cooperate fully in the investigation by the administrator into the petitioner's eligibility for reinstatement by promptly providing any information requested. If requested, the petitioner must participate in a recorded interview and answer fully and fairly under oath all questions about eligibility for reinstatement.

(C) Administrator's Responsibilities. Within 14 days after the commission receives its copy of the petition for reinstatement, the administrator shall submit to the Michigan Bar Journal for publication a notice briefly describing the nature and date of the discipline, the misconduct for which the petitioner was disciplined, and the matters required to be proved for reinstatement. The administrator shall investigate the petitioner's eligibility for reinstatement before a hearing on it, report the findings in writing to the board and the hearing panel within 56 days of the date the board assigns the petition to the hearing panel, and serve a copy on the petitioner. For good cause, the hearing panel may allow the administrator to file the report at a later date, but in no event later than 7 days before the hearing. The report must summarize the facts of all previous misconduct and the available evidence bearing on the petitioner's eligibility for reinstatement. The report is part of the record but does not restrict the parties in the presentation of relevant evidence at the hearing. Any evidence omitted from the report or received by the administrator subsequent to the filing of the report must be disclosed promptly to the hearing panel and the petitioner.

(D) Hearing on Petition. A reinstatement hearing may not be held earlier than 28 days after the administrator files the investigative report with the hearing panel unless the hearing panel has extended the deadline for filing the report. The proceeding on a petition for reinstatement must conform as nearly as practicable to

a hearing on a complaint. The petitioner shall appear personally before the hearing panel for cross-examination by the administrator and the hearing panel and answer fully and fairly under oath all questions regarding eligibility for reinstatement. The administrator and the petitioner may call witnesses or introduce evidence bearing upon the petitioner's eligibility for reinstatement. The hearing panel must enter an order granting or denying reinstatement and make a written report signed by the chairperson, including a transcript of the testimony taken, pleadings, exhibits and briefs, and its findings of fact. A reinstatement order may grant reinstatement subject to conditions that are relevant to the established misconduct or otherwise necessary to insure the integrity of the profession, to protect the public, and to serve the interests of justice. The report and order must be filed and served under MCR 9.118(F).

(E) Review. Review is available under the rules governing review of other hearing panel orders.

Rule 9.125 Immunity

A person is absolutely immune from suit for statements and communications transmitted solely to the administrator, the commission, or the commission staff, or given in an investigation or proceeding on alleged misconduct or reinstatement. The administrator, legal counsel, investigators, members of hearing panels, the commission, the board, and their staffs are absolutely immune from suit for conduct arising out of the performance of their duties.

Rule 9.126 Open Hearings; Confidential Files and Records

(A) Investigations. Except as provided in these rules, investigations by the administrator or the staff may not be made public. At the respondent's option, final disposition of a request for investigation not resulting in formal charges may be made public. In addition, any interested person may inspect the request for investigation and the respondent's answer thereto if a formal complaint has been filed.

(B) Hearings. Hearings before a hearing panel and the board must be open to the public, but not their deliberations.

(C) Papers. Formal pleadings, reports, findings, recommendations, discipline, reprimands, transcripts, and orders resulting from hearings must be open to the public. A personal history affidavit filed pursuant to MCR 9.124(B)(1) is a confidential document that is not open to the public. This subrule does not apply to a request for a disclosure authorization submitted to the board or the Supreme Court pursuant to subrules (D)(7) or (E)(5).

(D) Other Records. Other files and records of the board, the commission, the administrator, legal counsel, hearing panels and their members, and the staff of each may not be examined by or disclosed to anyone except

- (1) the commission,
- (2) the administrator,
- (3) the respondent as provided under MCR 9.115(F)(4),

- (4) members of hearing panels or the board,
- (5) authorized employees,
- (6) the Supreme Court, or
- (7) other persons who are expressly authorized by the board or the Supreme Court.

If a disclosure is made to the Supreme Court, the board, or a hearing panel, the information must also be disclosed to the respondent.

(E) Other Information. Notwithstanding any prohibition against disclosure set forth in this rule or elsewhere, the commission shall disclose the substance of information concerning attorney or judicial misconduct to the Judicial Tenure Commission, upon request. The commission also may make such disclosure to the Judicial Tenure Commission, absent a request, and to:

- (1) the State Bar of Michigan Client Security Fund,
- (2) the State Bar of Michigan Committee on Judicial Qualifications,
- (3) any court-authorized attorney disciplinary or admissions agency, or
- (4) other persons who are expressly authorized by the board or the Supreme Court.

(F) Summary of Disclosures. The board shall include in its annual report to the Supreme Court an accounting of all requests for disclosure that have been filed with the board pursuant to subrules (D)(7) and (E)(4). The accounting shall include the board's disposition of each request.

Rule 9.127 Enforcement

(A) Interim Suspension. The Supreme Court, the board, or a hearing panel may order the interim suspension of a respondent who fails to comply with its lawful order. The suspension shall remain in effect until the respondent complies with the order or no longer has the power to comply. If the respondent is ultimately disciplined, the respondent shall not receive credit against the disciplinary suspension or disbarment for any time of suspension under this rule. All orders of hearing panels under this rule shall be reviewable immediately under MCR 9.118. All orders of the board under this rule shall be appealable immediately under MCR 9.122. The reviewing authority may issue a stay pending review or appeal.

(B) Contempt. The administrator may enforce a discipline order or an order granting or denying reinstatement by proceeding against a respondent for contempt of court. The proceeding must conform to MCR 3.606. The petition must be filed by the administrator in the circuit court in the county in which the alleged contempt took place, or in which the respondent resides, or has or had an office. Enforcement proceedings under this rule do not bar the imposition of additional discipline upon the basis of the same noncompliance with the discipline order.

Rule 9.128 Costs

(A) Generally. The hearing panel and the board, in an order of discipline or an order granting or denying reinstatement, must include a provision directing the payment of costs within a specified period of time. Under exceptional circumstances, the board may grant a motion to reduce administrative costs assessed under this rule, but may not reduce the assessment for actual expenses. Reimbursement must be a condition in a reinstatement order.

(B) Amount and Nature of Costs Assessed. The costs assessed under these rules shall include both basic administrative costs and disciplinary expenses actually incurred by the board, the commission, a master, or a panel for the expenses of that investigation, hearing, review and appeal, if any.

(1) Basic Administrative Costs:

- (a) for discipline by consent pursuant to MCR 9.115(F)(5), \$750;
- (b) for all other orders imposing discipline, \$1,500;
- (c) with the filing of a petition for reinstatement under MCR 9.124(A), where the discipline imposed was a suspension of less than 3 years, \$750;
- (d) with the filing of a petition for reinstatement under MCR 9.124(A), where the discipline imposed was a suspension of 3 years or more or disbarment, \$1,500.

(2) Actual Expenses. Within 14 days of the conclusion of a proceeding before a panel or a written request from the board, whichever is later, the grievance administrator shall file with the board an itemized statement of the commission's expenses allocable to the hearing, including expenses incurred during the grievance administrator's investigation. Copies shall be served upon the respondent and the panel. An itemized statement of the expenses of the board, the commission, and the panel, including the expenses of a master, shall be a part of the report in all matters of discipline and reinstatement.

(C) Certification of Nonpayment. If the respondent fails to pay the costs within the time prescribed, the board shall serve a certified notice of the nonpayment upon the respondent. Copies must be served on the administrator and the State Bar of Michigan. Commencing on the date a certified report of nonpayment is filed, interest on the unpaid fees and costs shall accrue thereafter at the rates applicable to civil judgments.

(D) Automatic Suspension for Nonpayment. The respondent will be suspended automatically, effective 7 days from the mailing of the certified notice of nonpayment, and until the respondent pays the costs assessed or the board approves a suitable plan for payment. The board shall file a notice of suspension with the clerk of the Supreme Court and the State Bar of Michigan. A copy must be served on the respondent and the administrator. A respondent who is suspended for nonpayment of costs under this rule is required to comply with the requirements imposed by MCR 9.119 on suspended attorneys.

(E) Reinstatement. A respondent who has been automatically suspended under this rule and later pays the costs or obtains approval of a payment plan, and is

otherwise eligible, may seek automatic reinstatement pursuant to MCR 9.123(A) even if the suspension under this rule exceeded 179 days. However, a respondent who is suspended under this rule and, as a result, does not practice law in Michigan for 3 years or more, must be recertified by the Board of Law Examiners before the respondent may be reinstated.

Rule 9.129 Expenses; Reimbursement

The state bar must reimburse each investigator, legal counsel, hearing panel member, board member, and commission member for the actual and necessary expenses the board, commission, or administrator certifies as incurred as a result of these rules.

Rule 9.130 MCR 8.122 Cases; Arbitration; Discipline; Filing Complaint by Administrator

(A) Proceedings. A proceeding on alleged misconduct to which MCR 8.122 is applicable is the same as for a request for investigation. No investigation may be made on a claim by an attorney against a client.

(B) Arbitration. On written agreement between an attorney and his or her client, the administrator or an attorney the administrator assigns may arbitrate a dispute and enter an award in accordance with the arbitration laws. Except as otherwise provided by this subrule, the arbitration is governed by MCR 3.602. The award and a motion for entry of an order or judgment must be filed in the court having jurisdiction under MCR 8.122. If the award recommends discipline of the attorney, it must also be treated as a request for investigation.

(C) Complaint. If the administrator finds that the filing of a complaint in the appropriate court under MCR 8.122 will be a hardship to the client and that the client may have a meritorious claim, the administrator shall file the complaint on behalf of the client and prosecute it to completion without cost to the client.

Rule 9.131 Investigation of Member or Employee of Board or Commission; Investigation of Attorney Representing Respondent or Witness; Representation by Member or Employee of Board or Commission

(A) Investigation of Commission Member or Employee. If the request is for investigation of an attorney who is a member or employee of the commission, the following provisions apply:

(1) The administrator shall serve a copy of the request for investigation on the respondent by ordinary mail. Within 21 days after service, the respondent shall file with the administrator an answer to the request for investigation conforming to MCR 9.113. The administrator shall send a copy of the answer to the person who filed the request for investigation.

(2) After the answer is filed or the time for answer has expired, the administrator shall send copies of the request for investigation and the answer to the Supreme Court clerk.

(3) The Supreme Court shall review the request for investigation and the answer and shall either dismiss the request for investigation or appoint volunteer legal counsel to investigate the matter.

(4) If, after conducting the investigation, appointed counsel determines that the request for investigation does not warrant the filing of a formal complaint, he or she shall file a report setting out the reasons for that conclusion with the administrator, who shall send a copy of the report to the Supreme Court clerk, the respondent, and the person who filed the request for investigation. Review of a decision not to file a formal complaint is limited to a proceeding under MCR 9.122(A)(2). If appointed counsel determines not to file a complaint, the administrator shall close and maintain the file. MCR 9.126(A) governs the release of information regarding the investigation.

(5) If, after conducting the investigation, appointed counsel determines that the request for investigation warrants the filing of a formal complaint, he or she shall prepare and file a complaint with the board under MCR 9.115(B).

(6) Further proceedings are as in other cases except that the complaint will be prosecuted by appointed counsel rather than by the administrator.

If the request is for investigation of the administrator, the term "administrator" in this rule means a member of the commission or some other employee of the commission designated by the chairperson.

(B) Investigation of Board Member or Employee. Before the filing of a formal complaint, the procedures regarding a request for investigation of a member or employee of the board are the same as in other cases. Thereafter, the following provisions apply:

(1) The administrator shall file the formal complaint with the board and send a copy to the Supreme Court clerk.

(2) The Chief Justice shall appoint a hearing panel and may appoint a master to conduct the hearing. The hearing procedure is as provided in MCR 9.115 or 9.117, as is appropriate, except that no matters shall be submitted to the board. Procedural matters ordinarily within the authority of the board shall be decided by the hearing panel, except that a motion to disqualify a member of the panel shall be decided by the Chief Justice.

(3) The order of the hearing panel is effective 21 days after it is filed and served as required by MCR 9.115(J), and shall be treated as a final order of the board. The administrator shall send a copy of the order to the Supreme Court clerk.

(4) MCR 9.118 does not apply. Review of the hearing panel decision is by the Supreme Court as provided by MCR 9.122.

(C) Investigation of Attorney Representing a Respondent or Witness in Proceedings Before Board or Commission. If the request is for an investigation of an attorney for alleged misconduct committed during the course of that attorney's representation of a respondent or a witness in proceedings before the board or the commission, the procedures in subrule (A) shall be followed. A request for investigation that

alleges misconduct of this type may be filed only by the chairperson of the commission, and only if the commission passes a resolution authorizing the filing by the chairperson.

(D) Representation by Commission or Board Member or Employee. A member or employee of the Attorney Grievance Commission or the Attorney Discipline Board and its hearing panels may not represent a respondent in proceedings before the commission, the board, or the Judicial Tenure Commission, including preliminary discussions with employees of the respective commission or board prior to the filing of a request for investigation.

Subchapter 9.200 Judicial Tenure Commission

Rule 9.200 Construction

An independent and honorable judiciary being indispensable to justice in our society, subchapter 9.200 shall be construed to preserve the integrity of the judicial system, to enhance public confidence in that system, and to protect the public, the courts, and the rights of the judges who are governed by these rules in the most expeditious manner that is practicable and fair.

Rule 9.201 Definitions

As used in this chapter, unless the context or subject matter otherwise requires

- (A) "commission" means the Judicial Tenure Commission;
- (B) "judge" means:
 - (1) a person who is serving as a judge of an appellate or trial court by virtue of election, appointment, or assignment;
 - (2) a magistrate or a referee; or
 - (3) a person who formerly held such office and is named in a request for investigation that was filed during the person's tenure, except that with respect to conduct that is related to the office, it is not necessary that the request for investigation be filed during the person's tenure; nothing in this paragraph deprives the attorney grievance commission of its authority to proceed against a former judge;
- (C) "respondent" is a judge against whom a complaint has been filed;
- (D) "chairperson" is the commission chairperson and includes the acting chairperson;
- (E) "master" means one or more judges or former judges appointed by the Supreme Court at the commission's request to hold hearings on a complaint against a judge filed by the commission;
- (F) "examiner" means the executive director or equivalent staff member or other attorney appointed by the commission to present evidence at a hearing before a master or the commission, or in proceedings in the Supreme Court;
- (G) "request for investigation" is an allegation of judicial misconduct, physical or mental disability, or other circumstance that the commission may undertake to investigate under Const 1963, art 6, § 30, and MCR 9.207;
- (H) "complaint" is a written document filed at the direction of the commission, recommending action against a judge and alleging specific charges of misconduct in office, mental or physical disability, or some other ground that warrants commission action under Const 1963, art 6, § 30.

Rule 9.202 Judicial Tenure Commission; Organization

(A) Appointment of Commissioners. As provided by Const 1963, art 6, § 30, the Judicial Tenure Commission consists of 9 persons. The commissioners selected by the judges shall be chosen by mail vote conducted by the state court administrator. The commissioners selected by the state bar members shall be chosen by mail vote conducted by the State Bar of Michigan. Both mail elections must be conducted in accordance with nomination and election procedures approved by the Supreme Court. Immediately after a commissioner's selection, the selecting authority shall notify the Supreme Court and the Judicial Tenure Commission.

(B) Term of Office. A commissioner's term of office shall be 3 years. To achieve staggered terms, the following terms shall expire in consecutive years:

- (1) one of the appointments of the Governor, the judge of a court of limited jurisdiction, and one of the attorneys selected by the state bar;
- (2) the other appointment of the Governor, the probate judge, and the other attorney selected by the state bar;
- (3) the Court of Appeals judge, the circuit judge, and the judge selected by the state bar.

(C) Vacancy.

(1) A vacancy in the office of a commissioner occurs:

- (a) when a commissioner resigns or is incapable of serving as a member of the commission;
- (b) when a judge who is a member of the commission no longer holds the office held when selected;
- (c) when an attorney selected by state bar members is no longer entitled to practice in the courts of this state; and
- (d) when an appointee of the Governor becomes an attorney.

(2) Vacancies must be filled by selection of a successor in the same manner required for the selection of the predecessor. The commissioner selected shall hold office for the unexpired term of the predecessor. Vacancies must be filled within 3 months after the vacancy occurs. If a vacancy occurs after the selection of a new commissioner but before that commissioner's term officially begins, the commissioner-elect shall fill that vacancy and serve the remainder of the unexpired term.

(3) A member may retire by submitting a resignation in writing to the commission, which must certify the vacancy to the selecting authority.

(D) Commission Expenses.

- (1) The commission's budget must be submitted to the Supreme Court for approval.
- (2) The commission's expenses must be included in and paid from the appropriation for the Supreme Court.

(3) A commissioner may not receive compensation for services but shall be paid reasonable and necessary expenses.

(E) Quorum and Chairperson.

(1) The commission shall elect from among its members a chairperson, a vice-chairperson, and a secretary, each to serve 2 years. The vice-chairperson shall act as chairperson when the chairperson is absent. If both are absent, the members present may select one among them to act as temporary chairperson.

(2) A quorum for the transaction of business by the commission is 5.

(3) The vote of a majority of the members constitutes the adoption or rejection of a motion or resolution before the commission. The chairperson is entitled to cast a vote as a commissioner.

(F) Meetings of Commission. Meetings must be held at the call of the chairperson or the executive director, or upon the written request of 3 commission members.

(G) Commission Staff.

(1) The commission shall employ an executive director or equivalent person or persons, and such other staff members as the commission concludes are warranted, to perform the duties that the commission directs, subject to the availability of funds under its budget.

(2) The executive director or any other staff person who is involved in the investigation or prosecution of a judge

(a) shall not be present during the deliberations of the commission or participate in any other manner in the decision to file formal charges or to recommend action by the Supreme Court with regard to that judge, and

(b) shall have no substantive ex parte communication with the commission regarding a formal complaint that the commission has authorized.

(3) Commission employees are exempt from the operation of Const 1963, art 11, § 5, as are employees of courts of record.

Rule 9.203 Judicial Tenure Commission; Powers; Review

(A) Authority of Commission. The commission has all the powers provided for under Const 1963, art 6, § 30, and further powers provided by Supreme Court rule. Proceedings before the commission or a master are governed by these rules. The commission may adopt and publish administrative rules for its internal operation and the administration of its proceedings that do not conflict with this subchapter and shall submit them to the Supreme Court for approval.

(B) Review as an Appellate Court. The commission may not function as an appellate court to review the decision of a court or to exercise superintending or administrative control of a court, but may examine decisions incident to a complaint of judicial misconduct, disability, or other circumstance that the commission may undertake to investigate under Const 1963, art 6, § 30, and MCR 9.207. An erroneous decision by a judge made in good faith and with due diligence is not judicial misconduct.

(C) Control of Commission Action. Proceedings under these rules are subject to the direct and exclusive superintending control of the Supreme Court. No other court has jurisdiction to restrict, control, or review the orders of the master or the commission.

(D) Errors and Irregularities. An investigation or proceeding under this subchapter may not be held invalid by reason of a nonprejudicial irregularity or for an error not resulting in a miscarriage of justice.

(E) Jurisdiction Over Visiting Judges. Notwithstanding MCR 9.116(B), the Attorney Grievance Commission may take action immediately with regard to a visiting judge who currently holds no other judicial office if the allegations pertain to professional or personal activities unrelated to the judge's activities as a judge.

Rule 9.204 Disqualification of Commission Member or Employee

(A) Disqualification From Participation. A judge who is a member of the commission or of the Supreme Court is disqualified from participating in that capacity in proceedings involving the judge's own actions or for any reason set forth in MCR 2.003(B).

(B) Disqualification from Representation. A member or employee of the commission may not represent

(1) a respondent in proceedings before the commission, including preliminary discussions with employees of the commission before the filing of a request for investigation; or

(2) a judge in proceedings before the Attorney Grievance Commission, or the Attorney Discipline Board and its hearing panels, as to any matter that was pending before the Judicial Tenure Commission during the member's or the employee's tenure with the commission.

Rule 9.205 Standards of Judicial Conduct

(A) Responsibility of Judge. A judge is personally responsible for the judge's own behavior and for the proper conduct and administration of the court in which the judge presides.

(B) Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice. In addition to any other sanction imposed, a judge may be ordered to pay the costs, fees, and expenses incurred by the commission in prosecuting the complaint only if the judge engaged in conduct involving fraud, deceit, or intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court.

(1) Misconduct in office includes, but is not limited to:

(a) persistent incompetence in the performance of judicial duties;

- (b) persistent neglect in the timely performance of judicial duties;
- (c) persistent failure to treat persons fairly and courteously;
- (d) treatment of a person unfairly or discourteously because of the person's race, gender, or other protected personal characteristic;
- (e) misuse of judicial office for personal advantage or gain, or for the advantage or gain of another; and
- (f) failure to cooperate with a reasonable request made by the commission in its investigation of a judge.

(2) Conduct in violation of the Code of Judicial Conduct or the Rules of Professional Conduct may constitute a ground for action with regard to a judge, whether the conduct occurred before or after the respondent became a judge or was related to judicial office.

(3) In deciding whether action with regard to a judge is warranted, the commission shall consider all the circumstances, including the age of the allegations and the possibility of unfair prejudice to the judge because of the staleness of the allegations or unreasonable delay in pursuing the matter.

Rule 9.206 Service

(A) Judge. When provision is made under these rules for serving a complaint or other document on a judge, the service must be made in person or by registered or certified mail to the judge's judicial office or last known residence. If an attorney has appeared for a judge, service may be on the attorney in lieu of service on the judge.

(B) Commission. Service on the commission must be made by personal delivery or by registered or certified mail to the executive director at the commission's office.

Rule 9.207 Investigation; Notice

(A) Request for Investigation. A request for investigation of a judge must be made in writing and verified on oath of the complainant. The commission also is authorized to act on its own initiative or at the request of the Supreme Court, the state court administrator, or the Attorney Grievance Commission.

(B) Investigation. Upon receiving a request for investigation that is not clearly unfounded or frivolous, the commission shall direct that an investigation be conducted to determine whether a complaint should be filed and a hearing held. If there is insufficient cause to warrant filing a complaint, the commission may:

- (1) dismiss the matter,
- (2) dismiss the matter with a letter of explanation or caution that addresses the respondent's conduct,
- (3) dismiss the matter contingent upon the satisfaction of conditions imposed by the commission, which may include a period of monitoring,
- (4) admonish the respondent, or

(5) recommend to the Supreme Court private censure, with a statement of reasons.

(C) Adjourned Investigation. If a request for investigation is filed less than 90 days before an election in which the respondent is a candidate, and the request is not dismissed forthwith as clearly unfounded or frivolous, the commission shall postpone its investigation until after the election unless two-thirds of the commission members determine that the public interest and the interests of justice require otherwise.

(D) Notice to Judge.

(1) Before filing a complaint or taking action under subrule (B)(5), the commission must give written notice to the judge who is the subject of a request for investigation. The purpose of the notice is to afford the judge an opportunity to apprise the commission, in writing within 28 days, of such matters as the judge may choose, including information about the factual aspects of the allegations and other relevant issues. The notice shall specify the allegations and may include the date of the conduct, the location where the conduct occurred, and the name of the case or identification of the court proceeding relating to the conduct.

(a) For good cause shown, the commission may grant a reasonable extension of the 28-day period.

(b) The Supreme Court may shorten the time periods prescribed in this and other provisions of this subchapter at its own initiative or at the request of the commission.

(2) Before taking action under subrule (B)(2)-(4), the commission must give written notice to the judge of the nature of the allegations in the request for investigation and afford the judge a reasonable opportunity to respond in writing.

(3) If a judge so requests in response to a written notice from the commission under this subrule, the commission may offer the judge an opportunity to appear informally before the commission to present such information as the judge may choose, including information about the factual aspects of the allegations and other relevant issues.

(4) On final disposition of a request for investigation without the filing of a formal complaint, the commission shall give written notice of the disposition to the judge who was the subject of the request. The commission also shall provide written notice to the complainant that the matter has been resolved without the filing of a formal complaint.

(5) If the commission admonishes a judge pursuant to MCR 9.207(B)(4):

(a) The judge may file 24 copies of a petition for review in the Supreme Court, serve two copies on the commission, and file a proof of service with the commission within 28 days of the date of the admonishment. The

petition for review, and any subsequent filings, shall be placed in a confidential file and shall not be made public unless ordered by the Court.

(b) The executive director may file a response with a proof of service on the judge within 14 days of receiving service of the petition for review.

(c) The Supreme Court shall review the admonishment in accordance with MCR 9.225. Any opinion or order entered pursuant to a petition for review under this subrule shall be published and shall have precedential value pursuant to MCR 7.317.

(E) Physical or Mental Examination. In the course of an investigation, the commission may request the judge to submit to a physical or mental examination. Failure of the judge to submit to the examination may constitute judicial misconduct. MCR 2.311(B) is applicable to the examination.

(F) Expediting Matters. When the integrity of the judicial system requires, the Supreme Court may direct that the commission expedite its consideration of any investigation, and may set a deadline for the commission to submit any recommendation to the Court, notwithstanding any other provision in this subchapter.

Rule 9.208 Evidence

(A) Taking of Evidence During Preliminary Investigation. Before filing a complaint, the commission may take evidence before it or an individual member of the commission, or before the executive director or other member of the staff for purposes of the preliminary investigation.

(B) Cooperation With Investigation. A judge, clerk, court employee, member of the bar, or other officer of a court must comply with a reasonable request made by the commission in its investigation.

(C) Discovery.

(1) Pretrial or discovery proceedings are not permitted, except as follows:

(a) At least 21 days before a scheduled public hearing,

(i) the parties shall provide to one another, in writing, the names and addresses of all persons whom they intend to call at the hearing, a copy of all statements and affidavits given by those persons, and any material in their possession that they intend to introduce as evidence at the hearing, and

(ii) the commission shall make available to the respondent for inspection or copying all exculpatory material in its possession, as well as any other material in its possession.

(b) The parties shall give supplemental notice to one another within 5 days after any additional witness has been identified and at least 10 days before a scheduled hearing.

(2) A deposition may be taken of a witness who is living outside the state or who is physically unable to attend a hearing.

(3) The commission or the master may order a prehearing conference to obtain admissions or otherwise narrow the issues presented by the pleadings.

If a party fails to comply with subrules (C)(1) or (2), the master may, on motion and showing of material prejudice as a result of the failure, impose one or more of the sanctions set forth in MCR 2.313(B)(2)(a)-(c).

Rule 9.209 Pleadings

The complaint and answer are the only pleadings allowed.

(A) Complaint.

(1) Filing; Service. A complaint may not be filed before the completion of a preliminary investigation. Upon concluding that there is sufficient evidence to warrant the filing of a complaint, the commission shall direct the executive director or equivalent staff member to do the following:

- (a) enter the complaint in the commission docket, which is a public record;
- (b) retain the complaint in the commission office; and
- (c) promptly serve a copy of the complaint on the respondent.

(2) Form of Complaint. A complaint must be entitled:

"Complaint Against _____, Judge. No. _____."

A complaint must be in form similar to a complaint filed in a civil action in the circuit court.

(B) Answer.

(1) Filing. Within 14 days after service of the complaint, the respondent must file with the commission the original and 9 copies of an answer verified by the respondent.

(2) Form. The answer must be in form similar to an answer in a civil action in the circuit court, and must contain a full and fair disclosure of all facts and circumstances pertaining to the allegations regarding the respondent. Wilful concealment, misrepresentation, or failure to file an answer and disclosure are additional grounds for disciplinary action under the complaint.

(3) Affirmative defenses, including the defense of laches, must be asserted in the answer or they will not be considered.

Rule 9.210 Notice of Public Hearing; Appointment of Master and Examiners

(A) Notice of Public Hearing. Upon the filing of a complaint, the commission must set a time and a place of hearing before the commission and notify the respondent at least 21 days in advance, or request in writing that the Supreme Court appoint a master to hold the hearing. Such a request must be accompanied by a copy of the complaint.

(B) Appointment of Master.

(1) If the commission requests that the Supreme Court appoint a master to conduct the hearing, the Court shall do so within a reasonable period.

(2) The master shall set a time and a place for the hearing and shall notify the respondent and the examiner at least 28 days in advance. The master shall rule on all motions and other procedural matters incident to the complaint, answer, and hearing. Recommendations on dispositive motions shall not be announced until the conclusion of the hearing, except that the master may refer to the commission on an interlocutory basis a recommendation regarding a dispositive motion.

(3) MCR 2.003(B) shall govern all matters concerning the disqualification of a master.

(C) Appointment of Examiners. The executive director shall act as the examiner in a case in which a formal complaint is filed, unless the commission appoints another attorney to act as examiner.

Rule 9.211 Public Hearing

(A) Procedure. The public hearing must conform as nearly as possible to the rules of procedure and evidence governing the trial of civil actions in the circuit court. The hearing must be held whether or not the respondent has filed an answer or appears at the hearing. The examiner shall present the evidence in support of the charges set forth in the complaint, and at all times shall have the burden of proving the allegations by a preponderance of the evidence. A respondent is entitled to be represented by an attorney. Any employee, officer, or agent of the respondent's court, law enforcement officer, public officer or employee, or attorney who testifies as a witness in the hearing, whether called by the examiner or by the judge, is subject to cross-examination by either party as an opposite party under MCL 600.2161.

(B) Effect of Failure to Comply.

(1) The respondent's failure to answer or to appear at the hearing may not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for commission action.

(2) The respondent's failure to answer, to testify in his or her own behalf, or to submit to a medical examination requested by the commission or the master, may be considered as an evidentiary fact, unless the failure was due to circumstances unrelated to the facts in issue at the hearing.

(C) Record. The proceedings at the hearing must be recorded by stenographic or mechanical means. A separate record must be made if the master or the commission declines to admit evidence.

(D) Rulings. When the hearing is before the commission, at least 5 members must be present while the hearing is in active progress. Procedural and other interlocutory rulings must be made by the chairperson and are taken as consented to by the other members of the commission unless a member calls for a vote, in which event a ruling must be made by a majority vote of those present.

Rule 9.212 Subpoenas

(A) Issuance of Subpoenas.

(1) Before the filing of a complaint, the commission may issue subpoenas for the attendance of witnesses to provide statements or produce documents or other tangible evidence exclusively for consideration by the commission and its staff during the preliminary investigation. Before the filing of a complaint, the entitlement appearing on the subpoena shall not disclose the name of a judge under investigation.

(2) After the filing of a complaint, the commission may issue subpoenas either to secure evidence for testing before the hearing or for the attendance of witnesses and the production of documents or other tangible evidence at the hearing.

(B) Sanctions for Contempt; Disobedience by Respondent.

(1) Contempt proceedings against a nonparty for failure to obey a subpoena issued pursuant to this rule may be brought pursuant to MCR 2.506(E) in the circuit court for the county in which the individual resides, where the individual is found, where the contempt occurred, or where the hearing is to be held.

(2) If a respondent disobeys a subpoena or other lawful order of the commission or the master, whether before or during the hearing, the commission or the master may order such sanctions as are just, including, but not limited to, those set forth in MCR 2.313(B)(2)(a)-(e).

Rule 9.213 Amendments of Complaint or Answer

The master, before the conclusion of the hearing, or the commission, before its determination, may allow or require amendments of the complaint or the answer. The complaint may be amended to conform to the proofs or to set forth additional facts, whether occurring before or after the commencement of the hearing. If an amendment is made, the respondent must be given reasonable time to answer the amendment and to prepare and present a defense against the matters charged in the amendment.

Rule 9.214 Report of Master

Within 21 days after a transcript of the proceedings is provided, the master shall prepare and transmit to the commission in duplicate a report that contains a brief statement of the proceedings and findings of fact and conclusions of law with respect to the issues presented by the complaint and the answer. The report must be accompanied by three copies of the transcript of the proceedings before the master. On receiving the report and the transcript, the commission must promptly send a copy of each to the respondent.

Rule 9.215 Objections to Report of Master

Within 28 days after copies of the master's report and the transcript are mailed to the respondent, the examiner or the respondent may file with the commission an original and 9 copies of a statement of objections to the report of the master, along

with a supporting brief. A copy of a statement and brief must be served on the opposite party, who shall have 14 days to respond.

Rule 9.216 Appearance Before Commission

When the master files the report, the commission shall set a date for hearing objections to the report. The respondent and the examiner must file written briefs at least 7 days before the hearing date. The briefs must include a discussion of possible sanctions and, except as otherwise permitted by the Judicial Tenure Commission, are limited to 50 pages in length. Both the respondent and the examiner may present oral argument at the hearing.

MCR 9.216 retained 5.31.05

Rule 9.217 Extension of Time

The commission or its chairperson may extend for periods not to exceed 28 days the time for the filing of an answer, for the commencement of a hearing before the commission, for the filing of the master's report, and for the filing of a statement of objections to the report of a master. A master may similarly extend the time for the commencement of a hearing.

Rule 9.218 Hearing Additional Evidence

The commission may order a hearing before itself or the master for the taking of additional evidence at any time while the complaint is pending before it. The order must set the time and place of hearing and indicate the matters about which evidence is to be taken. A copy of the order must be sent to the respondent at least 14 days before the hearing.

Rule 9.219 Interim Suspension

(A) Petition.

(1) After a complaint is filed, the commission may petition the Supreme Court for an order suspending a judge from acting as a judge until final adjudication of the complaint.

(2) In extraordinary circumstances, the commission may petition the Supreme Court for an order suspending a judge from acting as a judge in response to a request for investigation, pending a decision by the commission regarding the filing of a complaint. In such a circumstance, the documents filed with the Court must be kept under seal unless the petition is granted.

Whenever a petition for interim suspension is granted, the processing of the case shall be expedited in the commission and in the Supreme Court. The commission shall set forth in the petition an approximate date for submitting a final recommendation to the Court.

(B) Contents; Affidavit or Transcript. The petition must be accompanied by a sworn affidavit or court transcript, and state facts in support of the allegations and the assertion that immediate suspension is necessary for the proper administration of justice.

(C) Service; Answer. A copy of the petition and supporting documents must be served on the respondent, who may file an answer to the petition within 14 days after service of the petition. The commission must be served with a copy of the answer.

Rule 9.220 Commission Decision

(A) Majority Decision.

(1) The affirmative vote of 5 commission members who have considered the report of the master and any objections, and who were present at an oral hearing provided for in MCR 9.216, or have read the transcript of that hearing, is required for a recommendation of action with regard to a judge. A commissioner may file a written dissent.

(2) If the hearing was held without a master, the affirmative vote of 5 commission members who were present when the evidence was taken or who have read the transcript of that proceeding is required for such a recommendation. A commissioner may file a written dissent.

(3) It is not necessary that a majority agree on the specific conduct that warrants a recommendation of action with regard to a judge, or on the specific action that is warranted, only that there was some conduct that warrants such a recommendation.

(B) Record of Decision.

(1) The commission must make written findings of fact and conclusions of law along with its recommendations for action with respect to the issues of fact and law in the proceedings, but may adopt the findings of the master, in whole or in part, by reference.

(2) The commission shall undertake to ensure that the action it is recommending in individual cases is reasonably proportionate to the conduct of the respondent, and reasonably equivalent to the action that has been taken previously in equivalent cases.

(C) Action With Respondent's Consent. With the consent of the respondent and the commission, the Supreme Court may impose a sanction or take other action at any stage of the proceedings under these rules.

Rule 9.221 Confidentiality; Disclosure

(A) Scope of Rule. Except as provided in this rule, all papers filed with the commission and all proceedings before it are confidential in nature and are absolutely privileged from disclosure by the commission or its staff, including former members and employees, in any other matter, including but not limited to civil, criminal, legislative, or administrative proceedings. All the commission's investigative files and commission-generated documents are likewise confidential and privileged from disclosure. Nothing in this rule prohibits the respondent judge from making statements regarding the judge's conduct.

(B) Before Filing a Formal Complaint.

(1) Before a complaint is filed, neither a commissioner nor a member of the commission staff may disclose the existence or contents of an investigation, testimony taken, or papers filed in it, except as needed for investigative purposes.

(2) The commission may at any time make public statements as to matters pending before it on its determination by a majority vote that it is in the public interest to do so, limited to statements

(a) that there is an investigation pending,

(b) that the investigation is complete and there is insufficient evidence for the commission to file a complaint, or

(c) with the consent of the respondent, that the investigation is complete and some specified disciplinary action has been taken.

(C) Discretionary Waiver of Confidentiality or Privilege. The commission may waive the confidentiality or privilege protections if:

(1) the respondent waives, in writing, the right to confidentiality or privilege;

(2) the grievant waives, in writing, the right to confidentiality or privilege;

(3) the witness whose statement, testimony, or other evidentiary item will be disclosed waives, in writing, the right to confidentiality or privilege; and

(4) a majority of the commission determines that the public interest will be served by doing so.

(D) After Filing of Formal Complaint

(1) When the commission issues a complaint, the following shall not be confidential or privileged:

(a) the complaint and all subsequent pleadings filed with the commission or master, all stipulations entered, all findings of fact made by the master or commission, and all reports of the master or commission; however, all papers filed with and proceedings before the commission during the period preceding the issuance of a complaint remain confidential and privileged except where offered into evidence in a formal hearing; and

(b) the formal hearing before the master or commission, and the public hearing provided for in MCR 9.216.

(2) This subrule neither limits nor expands a respondent's right to discovery under MCR 9.208(C).

(3) The confidentiality or privilege of any otherwise nonpublic disciplinary action is waived in any proceeding on a concurrent or subsequent formal complaint.

(E) Disclosure to Grievant.

(1) Upon completion of an investigation or proceeding on a complaint, the commission shall disclose to the grievant that the commission

(a) has found no basis for action against the judge or determined not to proceed further in the matter,

(b) has taken an appropriate corrective action, the nature of which shall not be disclosed, or

(c) has recommended that the respondent be publicly censured, suspended, removed, or retired from office.

(F) Public Safety Exception. When the commission receives information concerning a threat to the safety of any person or persons, information concerning such person may be provided to the person threatened, to persons or organizations responsible for the safety of the person threatened, and to law enforcement or any appropriate prosecutorial agency.

(G) Disclosure to State Court Administrator.

(1) The commission may refer to the state court administrator requests for investigation and other communications received by the commission concerning the conduct of a judge if, in the opinion of the commission, the communications are properly within the scope of the duties of the administrator. The commission may provide the administrator with files, records, investigations, and reports of the commission relating to the matter. Such a referral does not preclude action by the commission if the judge's conduct is of such a nature as to constitute grounds for action by the commission, or cannot be adequately resolved or corrected by action of the administrator.

(2) The commission may disclose to the administrator, upon request, the substance of files and records of the commission concerning a former judge who has been or may be assigned judicial duties by the administrator; a copy of the information disclosed must be furnished to the judge.

(H) Disclosure to Attorney Grievance Commission. Notwithstanding the prohibition against disclosure in this rule, the commission shall disclose information concerning a judge's misconduct in office, mental or physical disability, or some other ground that warrants commission action under Const 1963, art 6, § 30, to the Attorney Grievance Commission, upon request. Absent a request, the commission may make such disclosure to the Attorney Grievance Commission. In the event of a dispute concerning the release of information, either the Attorney Grievance Commission or the Judicial Tenure Commission may petition the Supreme Court for an order resolving the dispute.

By order dated June 8, 2005, this Court amended Rule 9.221 of the Michigan Court Rules, effective immediately. 472 Mich ciii-cvi (2005). Notice and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the amendment of Rule 9.221 is retained.

On order of the Court, the proposed amendment of Rule 9.221(I) of the Michigan Court Rules having been published for comment at 472 Mich 1251 (2005), and an opportunity having been provided for comment in writing and at a public hearing, the Court declines to adopt the proposed amendment. This administrative file is closed without further action.

Rule 9.222 Record Retention

The commission shall develop a record-retention policy, which shall include a description of the materials that are to be stored, a list of the time for which specific materials must be maintained, and procedures for the disposal of records.

Rule 9.223 Filing and Service of Documents by Commission

Within 21 days after entering an order recommending action with regard to a respondent, the commission must take the action required by subrules (A) and (B).

(A) Filings in Supreme Court. The commission must file in the Supreme Court:

- (1) the original record arranged in chronological order and indexed and certified;
- (2) 24 copies of the order; and
- (3) a proof of service on the respondent.

(B) Service on Respondent. The commission must serve the respondent with:

- (1) notice of the filing under MCR 9.223(A)(1);
- (2) 2 copies of the order;
- (3) 2 copies of the index to the original record; and
- (4) a copy of a portion of the original record not submitted by or previously furnished to the respondent.

Rule 9.224 Review by Supreme Court

(A) Petition by Respondent. Within 28 days after being served, a respondent may file in the Supreme Court 24 copies of

- (1) a petition to reject or modify the commission's recommendation, which must:
 - (a) be based on the record,
 - (b) specify the grounds relied on,
 - (c) be verified, and
 - (d) include a brief in support; and
- (2) an appendix presenting portions of the record that the respondent believes necessary to fairly judge the issues.

The respondent must serve the commission with 3 copies of the petition and 2 copies of the appendix and file proof of that service.

(B) Brief of Commission. Within 21 days after respondent's petition is served, the commission must file

- (1) 24 copies of a brief supporting its finding, and
- (2) proof that the respondent was served with 2 copies of the brief.

The commission may file 24 copies of an appendix containing portions of the record not included in the respondent's appendix that the commission believes necessary to fairly judge the issues.

(C) Review in Absence of Petition by Respondent. If the respondent does not file a petition, the Supreme Court will review the commission's recommendation on the record file. The Supreme Court may order that briefs be filed or arguments be presented.

(D) Form of Briefs. A brief filed under this subrule is to be similar to a brief filed in an appeal to the Supreme Court.

(E) Additional Evidence. The Supreme Court may, if cause is shown, order that further evidence be taken and added to the original record.

(F) Submission. The clerk will place the case on a session calendar under MCR 7.312. Oral argument may be requested.

Rule 9.225 Decision by Supreme Court

The Supreme Court shall review the record of the proceedings and file a written opinion and judgment, which may accept or reject the recommendations of the commission, or modify the recommendations by imposing a greater, lesser, or entirely different sanction. When appropriate, the Court may remand the matter to the commission for further proceedings, findings, or explication. If the respondent and the commission have consented to a course of action under subrule 9.220(C) and the Court determines to impose a greater, lesser, or entirely different sanction, the respondent shall be afforded the opportunity to withdraw the consent and the matter shall be remanded to the commission for further proceedings.

Rule 9.226 Motion for Rehearing

Unless the Supreme Court directs otherwise, the respondent may file a motion for rehearing within 14 days after the filing of the decision. If the Supreme Court directs in the decision that a motion for rehearing may not be filed, the decision is final on filing.

Rule 9.227 Immunity

A person is absolutely immune from civil suit for statements and communications transmitted solely to the commission, its employees, or its agents, or given in an investigation or proceeding on allegations regarding a judge, and no civil action predicated upon the statements or communications may be instituted against a complainant, a witness, or their counsel. Members of the commission and their employees and agents, masters, and examiners are absolutely immune from civil suit for all conduct in the course of their official duties.

Rule 9.228 Ethics Materials and Programs

The commission shall work with other groups and organizations, including the State Bar of Michigan, to develop educational materials and programs that are designed to assist judges in maintaining an awareness and understanding of their ethical obligations.